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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,894	09/23/2003	Frank G. McArthur	NAIR-001	8640

21884 7590 05/17/2005

WELSH & FLAXMAN LLC  
2450 CRYSTAL DRIVE  
SUITE 112  
ARLINGTON, VA 22202

EXAMINER
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FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/667,894

Applicant(s)

MCARTHUR ET AL.

Examiner

Ahmed M Farah

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15 are again rejected under 35 U.S.C. 102(e) as being anticipated by McDaniel U.S. Patent No. 6,676,655.

McDaniel discloses methods for treating skin disorders, the methods comprising the step of exposing the treatment area to a laser light generated by an Nd:YAG laser in the wavelength range of 1064 nm.

As to claims 4 and 5, he teaches treatment durations that are analogous to the recited treatment times.

As to claims 1, 8, and 9, his treatment dose is between approximately 0.1 –100 J/cm<sup>2</sup>.

### ***Response to Arguments***

Applicant's arguments filed on February 11, 2005, have been fully considered but they are not persuasive. The applicant makes the following arguments/remarks:

A) The applicant recognizes that McDaniel discloses an Nd:YAG laser in the wavelength range of 1,064 nm for treating skin disorders. However, he argues that the laser of McDaniel does not generate a monochromatic, coherent light as recited in the instant application. He further argues that the laser of McDaniel generates a multichromatic electromagnetic radiation.

First, although the applicant argues that the Nd:YAG laser of McDaniel is different than what is being claimed, Claim 3 of the instant application clearly recites that the treatment laser source is an Nd:YAG laser, which operates in the wavelength range of 1064 nm. This source and the recited wavelength are similar to the source and wavelength discloses by McDaniel, respectively.

Secondly, as noted by the applicant, McDaniel discloses the use of an Nd:YAG laser in the wavelength range of 1,064 nm. In general, laser light is defined as a monochromatic, coherent light. If the output of a laser source is not monochromatic, coherent light, the output light cannot be considered as a laser light and the source is not lasing. For instance, when using gas lasers, such as an Excimer lasers, if the ratio of laser gases is not accurate, or laser optics are not aligned, and/or the discharge voltage has not been reached, etc., the source may generate a diffuse light. And, until the source provides a monochromatic, coherent light, its output cannot be considered a laser light.

B) Although the applicant admits that the treatment dose (energy fluence) of McDaniel is less than about  $10 \text{ J/cm}^2$ , he nevertheless argues McDaniel fails to teach a treatment dose in the range of approximately  $0.1\text{-}100 \text{ J/cm}^2$ .

In response to this argument, the energy of fluence of McDaniel, received by the skin, is clearly within the treatment dose of 0.1-100 J/cm<sup>2</sup> as presently claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

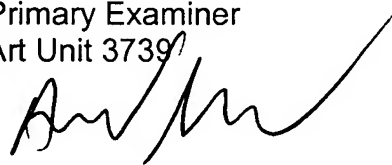
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah  
Primary Examiner  
Art Unit 3739

A handwritten signature in black ink, appearing to read 'Ahmed M Farah', written over the printed name and title.

May 12, 2005.